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INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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IN RE:	:	VIOLATIONS:
	:	
NEGLEY ASSOCIATES, INC. 388 Pompton Avenue P. O. Box 206 Cedar Grove, NJ 07009	:	Section 611-A(20) of 147 of 2002 (40 P.S. § 310.11) Section 1615(a) and 1616 of the Surplus Lines Act, Act of May 17, 1921, P.L. 682, added by the Act of December 18, 1992, P.L. 1519 (40 P.S. § 991.1615 and 991.1616)
Respondent.	:	Docket No. CO04-07-015

CONSENT ORDER

AND NOW, this 20th day of August, 2004, this Order is hereby issued by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S.A. §101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

FINDINGS OF FACT

3. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

(a) Respondent is Negley Associates, Incorporated, and maintains its address at 388 Pompton Avenue, Post Office Box 206, Cedar Grove, New Jersey 07009.

(b) Respondent possessed a Pennsylvania non-resident producer license during the respective periods, but did not receive a Pennsylvania surplus lines license until October 1, 2003.

(c) Between 1999 and 2003, Respondent accepted applications from Pennsylvania retail producers and procured surplus lines insurance for Pennsylvania policyholders without possessing a Pennsylvania surplus lines license.

(d) Respondent submitted surplus lines filings and taxes through the David L. Ellis Agency, Incorporated, which possessed a Pennsylvania surplus lines license and processed the filings and taxes as a courtesy to Respondent.

(e) On July 1, 2004, Respondent confirmed that it submitted surplus lines filings and taxes through the David L. Ellis Agency although the latter did not act as a producer during the procurement process of the surplus lines insurance.

(f) Respondent was unable to identify the number of surplus lines policies it procured for Pennsylvania policyholders, but confirmed that it compensated the David L. Ellis Agency for the courtesy filings by paying the latter between $50.00 and $100.00 per courtesy filing, totaling between $1,500.00 and $2,000.00 per month.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner concludes and finds the following Conclusions of Law:

(a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

(b) Section 611-A(20) of Act 147 of 2002 prohibits a licensee from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the Department that the licensee is worthy of licensure (40 P.S. § 310.11).

(c) Respondent's activities described above in paragraphs 3(c) through 3(f) violate Section 611-A(20) of Act 147 of 2003 (40 P.S. § 310.11).

(d) Respondent's violations of Section 611-A(20) of Act 147 are punishable by the following, under Section 691-A of Act 147 of 2003 (40 P.S. § 310.91):

(i) suspension, revocation or refusal to issue the certificate of qualification or license;

(ii) imposition of a civil penalty not to exceed five thousand dollars ($5,000.00) for every violation of the Act;

(iii) an order to cease and desist; and

(iv) any other conditions as the Commissioner deems appropriate.

(e) Section 1615 of the Surplus Lines Act prohibits any agent or broker licensed by the Department to transact surplus lines insurance unless such agent or broker is licensed as a surplus lines agent (40 P.S. § 991.1615).

(f) Respondent's activities described above in paragraphs 3(c) through 3(f) constitute transacting surplus lines insurance without being properly licensed.

(g) Section 1616 of the Surplus Lines Act stipulates that a surplus lines licensee may accept insurance from any broker duly licensed as to the kind or kinds of insurance involved (40 P.S. § 991.1616).

(g) Respondent's activities described above in paragraphs 3(c) through 3(f) constitute accepting business from unlicensed brokers.

(h) Respondent's violations of Sections 1615 and 1616 of the Surplus Lines Act are punishable by the following, under Section 1625(b) of the Insurance Company Law:

(i) imposition of a penalty not exceeding $1,000 for the first offense and $2,000 for each succeeding offense.

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consents to the following:

(a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.

(b) Respondent's certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) any terms of this Order have not been complied with, or (ii) any complaint against Respondent is accurate and a statute or regulation has been violated. The Department's right to act under this section is limited to a period of five (5) years from the date of this Order.

(c) Respondent specifically waives its right to prior notice of said suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondent by certified mail, return receipt requested, notification of said suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of Respondent's written request.

(d) At the hearing referred to in paragraph 5(c) of this Order, Respondent shall have the burden of demonstrating that it is worthy of a license.

(e) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(b) above, and Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that it is worthy of a license, Respondent's suspended certificates and licenses shall be revoked.

6. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

7. Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

BY: NEGLEY ASSOCIATES, INC., Respondent

- VICE PRESIDENT

President / Vice President

Secretary / Treasurer

RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania